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6  
7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,  
10  
11 Plaintiff,  
12  
13 vs.  
14 MIGUEL NAVARRETE,  
Defendant

Case No.: 1:19CR2058-SMJ-1  
DEFENDANT'S SENTENCING  
MEMORANDUM

15 TO: JOSEPH HARRINGTON, ACTING UNITED STATES ATTORNEY;  
16 PATRICK CASHMAN, ASSISTANT UNITED STATES ATTORNEY

17 Defendant, Miguel Navarrete, by and through his attorney of record, Troy J. Lee  
18 of Lee & Associates, submits the following sentencing memorandum:

19 **I. BASE OFFENSE LEVEL & ENHANCEMENTS**

20 A. Base Offense Level and Enhancements.

21 Mr. Navarrete agrees with the probation officer's calculation of the base offense  
22 level of 20. However, Mr. Navarrete objects to the two-level adjustment under paragraph  
23 50, pursuant to USSG §2B3.1(b)(5).  
24  
25

1 USSG §2B3.1(b)(5) provides for a two-level enhancement if a person was  
 2 “physically restrained” to facilitate the commission or escape from the crime. USSG  
 3 §2B3.1(b)(5) (2018). The Guidelines define that term as the “forcible restraint of the  
 4 victim such as by being tied, bound, or locked up.” U.S.S.G. § 1B1.1 cmt. n.1(K).

5 Despite that, the Ninth Circuit previously held that a bank robber could physically  
 6 restrain a victim if there were a “sustained focus” on the restrained person, that lasts long  
 7 enough for the robber to direct the victim into a room or order the victim to walk  
 8 somewhere. *See United States v. Parker*, 241 F.3d 1114, 1118-1119 (9<sup>th</sup> Cir. 2001).  
 9

10 That natural incongruence between the guidelines and that holding was further  
 11 explored in *United States v. Albritton*, 622 F.3d 1104 (9<sup>th</sup> Cir. 2010). In that case, the  
 12 Court considered cases in which courts have grappled with that issue and concluded that  
 13 a “sustained focus” exists when a bank robber directs a victim into a room or orders a  
 14 victim to walk somewhere else. *Id.* Similarly, a “sustained focus” exists when, at  
 15 gunpoint, a victim is ordered into a back room, *United States v. Nelson*, 137 F.3d 1094,  
 16 1112 (9<sup>th</sup> Cir.1998), or repeatedly forced to get down and get up, *United States v.*  
 17 *Thompson*, 109 F.3d 639, 641 (9<sup>th</sup> Cir.1997). However, it is not enough if the defendant  
 18 briefly points a gun at a victim and orders her once to get down. *Parker*, 241 F.3d at  
 19 1118-19 (explaining that Congress must have meant something more, because otherwise  
 20 “nearly all armed bank robberies will presumably involve such acts”).  
 21

22 The facts in this case are like those in *Parker*. In this case, the allegations were  
 23 that a co-defendant pointed a handgun at the victim and twice ordered him out of the car.  
 24 He complied with those commands and his car was taken. Unlike cases involving a  
 25

1 “sustained focus,” he was not ordered to go to another area or room or even given  
2 repeated alternating commands. If the act of ordering an individual out of a car does  
3 constitute “physical restraint”, then this would also be a similar situation as in *Parker*—  
4 all “carjacking” cases would naturally involve such restraint.

5 Thus, Mr. Navarrete requests that the Court compute the offense level at a 26.  
6 Such a calculation, when coupled with the offender score, results in a guideline range of  
7 110-137 months.  
8

9 **B. Factual Objections**

10 Mr. Navarrete objects specifically to paragraph 17 of the presentence report in  
11 that he was named as one of the three individuals who initially went up to the victim’s car  
12 and assaulted the victim. However, he does admit that he was involved in the incident  
13 and was aware of what was occurring at the time.

14 The complication is due to this case involving several witnesses, in addition to the  
15 victim. Through the numerous interviews and recordings, it was difficult to ascertain Mr.  
16 Navarrete’s level of involvement, although he was admittedly there and lent support to  
17 others and was aware of the incident. For example, in the initial 911 call from the victim,  
18 as well as at least one interview, he did not name Mr. Navarrete. In that call, he named  
19 “Shooter”, “Grinch,” and “Chato,” who were subsequently identified as Jose Salas, Oscar  
20 Trevino, and Rolando Vargas.  
21

22 There is support for that confusion. For example, as recited in paragraph 28 of  
23 the PSR, during one of the initial interviews, the victim stated he could not specifically  
24 see Mr. Navarrete but believed that he had participated in the assault. Furthermore, there  
25

1 was no mention from other witnesses regarding Mr. Navarrete's involvement with the  
2 assault itself.

3 However, resolution of that factual issue does not affect the offense level in this  
4 case; nor is there a request for any departure based on the level of participation.

## 5 II. DEPARTURES

6 Pursuant to the plea agreement, there are no requests for downward departures.

## 7 III. 18 U.S.C. § 3553(a)

8 Mr. Navarrete is asking that the court vary from the guidelines and impose a term  
9 of incarceration of five years, followed by a five-year term of supervised release.  
10

11 Such a sentence will serve the goals of 18 U.S.C. § 3553(a) in this case. Under 18  
12 U.S.C. § 3553(a), the Court must consider the following factors when imposing a  
13 sentence:

- 14 (1) the nature and circumstances of the offense and the history and characteristics  
15 of the defendant;
- 16 (2) the need for the sentence imposed to:
  - 17 (A) reflect the seriousness of the offense, to promote respect for the law, and  
to provide just punishment for the offense;
  - 18 (B) to afford adequate deterrence to criminal conduct;
  - 19 (C) to protect the public from further crimes of the defendant; and
  - 20 (D) to provide the defendant with needed educational or vocational training,  
medical care, or other correctional treatment in the most effective manner;
- 21 (3) the kinds of sentences available;
- 22 (4) the advisory guideline range;
- 23 (5) any pertinent policy statements issued by the Sentencing Commission;
- 24 (6) the need to avoid unwarranted sentencing disparities; and
- 25 (7) the need to provide restitution.

18 U.S.C. §3553(a).

### 24 A. Nature and Circumstances of the Offense

25 This case involved a "car-jacking" of the victim's car as well as an assault.

1 As such, it is a serious offense and it is not being argued to the contrary. However, as it  
2 does encompass egregious behavior and public safety concerns, it should be noted that  
3 this case did not involve a random target. Instead, although somewhat unclear through  
4 statements to law enforcement, the incident occurred either because of the victim  
5 jokingly crashing a car belonging to the father of another individual or had to do with the  
6 theft of a firearm. Counsel is not attempting to minimize the behavior, other than make it  
7 clear that this incident did not target a random, entirely innocent, victim.  
8

9 B. History and Characteristics of the Defendant

10 Mr. Navarrete had a troubled childhood, which helps explain his involvement  
11 with gangs. He was very upfront with the probation officer during his interview, relaying  
12 incidents involving abuse, as well as a lack of parental figures in his life. Because of that,  
13 he turned to drug abuse (beginning at 10 years old) and according to his wife, was a  
14 member of a gang starting at that same age,  
15

16 Mr. Navarrete does have a support system once he is out of jail. He has a wife,  
17 Llesenia Farias, with whom he has been in a relationship for 15 years, who is standing by  
18 his side. He has five children with her. Thus, he has all the reason in the world to remain  
19 out of custody and take advantage of services offered to him through supervised release.  
20 Ms. Farias indicated that at one point, Mr. Navarrete was doing well when he was on  
21 DOC supervision, although that supervision did not last long.  
22

23 Mr. Navarrete does have a history of taking advantage of services offered to him.  
24 He did obtain a GED and took college courses and earned certificates when in custody.  
25 Once out, he continued to take courses, although was not able to finish that degree.

1  
2 C. Necessity of the Sentence

3 A 62-month sentence followed by three years of supervised release is sufficient  
4 but not more than necessary to effectuate the purposes of the guidelines. It allows Mr.  
5 Navarrete to again take advantage of treatment and classes while confined, protects the  
6 community, and provides for substantial supervision once released with strict conditions.

7  
8 D. Need to Avoid Sentencing Disparities

9 A 62-month sentence does not create a sentencing disparity within this case or  
10 other similarly situated defendants. Mr. Navarrete would spend the better part of five  
11 years in prison, as well as be monitored for 3 years. If he were to violate supervision,  
12 the Court could sentence him to an additional three years of custody.

13 There are four co-defendants in this case (Oscar Trevino, Rolando Vargas, Juanita  
14 Ramirez, and Karleigh Bybee), and a 62-month sentence does not create a disparity. Mr.  
15 Trevino's case is still pending with a court date in October. Mr. Vargas was sentenced  
16 to 84 months. However, Mr. Vargas had a prior Assault 1 conviction as well as other  
17 pending felonies. In addition, Mr. Vargas was always named as one of the individuals  
18 who assaulted the victim and who initially approached the car. Ms. Ramirez' case was  
19 recently dismissed on motion of the government. Finally, Ms. Bybee's case is still  
20 pending, although it does involve a charge of Misprision of a Felony for driving the  
21 victim to the scene and driving individuals away from the scene after the incident.  
22  
23  
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1  
2 **V. CONCLUSION**

3 Based on the foregoing, Mr. Navarrete requests that the Court sentence him to 62  
4 months of incarceration followed by the agreed three-year term of supervised release.  
5 Such a sentence adequately reflects the circumstances of the charged conduct as well as  
6 considers Mr. Navarrete's personal circumstances. Such a sentence would also  
7 accomplish the stated goals of 18 U.S.C. § 3553(a).  
8

9 Additionally, it is requested that Mr. Navarrete be given a recommendation for  
10 placement at Sheridan Correctional Institution in Oregon to be close to family, and that  
11 it be recommended that he participate in any available drug offender programs, such as  
12 the RDAP program. Mr. Navarrete is aware that the circumstances of this case may  
13 prohibit any benefit to his release date, but nonetheless, he wishes to benefit from those  
14 programs.  
15

16 Finally, it is requested that he be given credit for the time served in federal  
17 custody as well as consideration of the time he spent in state custody on this matter. He  
18 first appeared in federal custody on December 4, 2019, although he was incarcerated  
19 from September 16, 2019, to October 21, 2019, when this matter was being handled on  
20 the state level.  
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22  
23  
24  
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1  
2 RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of August, 2021.

3 \_\_\_\_\_s/ Troy J. Lee\_\_\_\_\_  
4 Troy J. Lee (WSBA #30527)  
5 Attorney for Defendant  
6 Lee & Associates  
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11 CERTIFICATE OF SERVICE

12 I hereby certify that on August 30, 2021, I electronically filed the Defendant's Sentencing  
13 Memorandum under seal with the Clerk of the Court using the CM/ECF System, which  
14 will send notification of such filing to the following: Patrick Cashman, Assistant United  
15 States Attorney.

16 s/ Troy J. Lee  
17 Troy J. Lee  
18 Attorney for Defendant  
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